

March 16, 2015

EX PARTE OR LATE FILED

Ex Parte Notice

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Accepted / Filed

MAR 16 2015

Federal Communications Commission
Office of the Secretary

Re: *Telephone Number Portability, et al.*, CC Docket No. 95-116, WC Docket Nos.
07-149 & 09-109

DOCKET FILE COPY ORIGINAL

Dear Ms. Dortch:

On March 12, 2015, Richard Jacowleff, President and Chief Executive Officer of Telcordia Technologies, Inc., dba iconectiv ("Telcordia"), Tara O'Neill Diaz, Executive Vice President and General Counsel of Telcordia, Rear Admiral Jamie Barnett, USN, ret., on behalf of Telcordia and I, on behalf of Telcordia, met separately with Commissioner Ajit Pai and his legal adviser Nicholas Degani, Commissioner Michael O'Rielly and his legal adviser Amy Bender, and Commissioner Clyburn, her legal adviser Rebekah Goodheart, and intern Yosef Getachew, regarding the above-referenced proceedings. The Telcordia representatives made some or all of the following points summarized below during these meetings.¹

The LNPA selection process has been fundamentally open and transparent, given the limits of a competitive bidding situation addressing critical infrastructure. The basic selection process, utilizing the North American Portability Management LLC's ("NAPM") Future of the Number Portability Administration Center ("FoNPAC") and the North American Numbering Council's ("NANC") Selection Working Group ("SWG") is one that was subject to public comment and which Neustar endorsed. Similarly, all of the procurement documents (Request for Proposals, Technical Requirement Document, and Vendor Qualification Statement) were subject to public comment, and were endorsed by Neustar before initial bids were submitted. Neustar only started questioning the selection process and the content of the procurement documents after it became apparent that its bid was in trouble. Neustar's argument that a rulemaking must be conducted to designate a different LNPA is simply wrong, as Telcordia has previously pointed out.²

¹ Mr. Jacowleff and Ms. Diaz were not present for any discussion of NAPM, NANC, SWG, or Neustar confidential or highly confidential materials.

² Reply Comments of Telcordia Technologies, Inc., d/b/a iconectiv at 51-61, WC Docket No. 09-109 and CC Docket No. 95-116, (filed Aug. 22, 2014) (errata filed Sept. 3, 2014) (errata at 52-62) ("Telcordia Reply Comments").

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Moreover, although protective orders have been necessary to protect confidential bid information—particularly in the situation in which Neustar has been advocating for a reopening of competitive bidding—and to honor the confidentiality under which NANC, the SWG and the FoNPAC conducted their evaluations and deliberations, the protective orders have been structured to permit all parties, including public interest groups, to view all documents (other than the “Critical Infrastructure” documents and excerpts) either themselves or through representatives not involved in competitive decisionmaking. Nor does the belated introduction into the record of the transcript of NANC’s closed meeting—at which it evaluated competitive bids—create any material prejudice to any party. ****BEGIN HIGHLY CONFIDENTIAL****

[REDACTED]
 [REDACTED]
****END HIGHLY CONFIDENTIAL****

There also has not been any unfair inconsistency between the SWG/FoNPAC’s decision to extend the deadline for initial bids, and its subsequent decision not to accept Neustar’s second Best and Final Offer (“BAFO”). The facts, as described in the NANC and NAPM reports, show these situations to be dramatically different: Neustar suffered no prejudice from the former, and Telcordia would have suffered substantial prejudice from the latter. As the NANC and NAPM Reports provided in response to the February 11, 2014 letter from Julie Veach, Chief, Wireline Competition Bureau show, ****BEGIN CONFIDENTIAL****

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This contrasts sharply with Neustar’s second BAFO. Both Neustar and Telcordia were told during interviews conducted by the FoNPAC in August 2013 that the FoNPAC would be

- ³ Report of the North American Portability Management LLC in Response to the Wireline competition Bureau Letter, dated Feb. 11, 2014, at 4-5, 26-31 (filed Mar. 20, 2014) (“NAPM LNPA Selection Process Report”) (attached to Letter from Betty Ann Kane, Chairman, North American Numbering Council, to Julie A. Veach, Chief, Wireline Competition Bureau, FCC, WC Docket No. 09-109, CC Docket No. 95-116 (dated Apr. 24, 2014 and filed Apr. 25, 2014).
- ⁴ Email from Sanford Williams, Assistant Chief, Competition Policy Division, FCC, to Timothy Decker, Co-Chair, NAPM LLC (dated Apr. 16, 2013), attached as Attachment 3 to NAPM LNPA Selection Process Report.
- ⁵ NAPM LNPA Selection Process Report at 5.

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requesting a BAFO. Neustar, like Telcordia, submitted its BAFO on September 18, 2013. The events that followed strongly suggest that Neustar received nonpublic information regarding its competitive standing, which precipitated its attempt to submit its revised BAFO. ****BEGIN**

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CONFIDENTIAL** [REDACTED]
 [REDACTED]
 [REDACTED] ****END**

HIGHLY CONFIDENTIAL** [REDACTED]
 [REDACTED] ****BEGIN CONFIDENTIAL**** [REDACTED]
 [REDACTED] ****END CONFIDENTIAL****.

In the face of a likely leak of competitive bidding-related information, NANC, NAPM and the Commission would have significantly prejudiced Telcordia had they proceeded with subsequent rounds of bidding, as Neustar advocates. This was not an arbitrary, premature cessation of competitive bidding, as Neustar contends.⁹

We also discussed that both Telcordia and Ericsson are in businesses that depend on being neutral, as well as being perceived as neutral, such that it would be contrary to their overall business interests to act in ways that were not neutral.¹⁰ Telcordia, for example, has many small carriers as customers of its existing products. In addition, as part of its bid, Telcordia proposed a set of safeguards, copies of which are attached and which were provided to Commissioner Clyburn and her staff, which was also backstopped by a structure in which three of five board members will be independent—which is a greater percentage of independent directors than Neustar had when it was owned by Warburg, which as owner of the LNPA also owned stakes in telecommunications carriers.¹¹ Notably, all of these directors will be subject to Telcordia's LNPA code of conduct, compliance with which will be part of the semiannual neutrality audits required per the RFP. Furthermore, if the Commission were to require Ericsson to place some of

⁶ *Id.* at 46; Telcordia Reply Comments at 81. At the meetings summarized in this letter, Telcordia provided each FCC attendee with copies of pages 81 and 82 of Telcordia's reply comments, which are incorporated by reference herein.

⁷ NAPM LNPA Selection Process Report at 46.

⁸ Letter from Aaron M. Panner, Counsel to Neustar, to Marlene Dortch, Secretary, FCC, Exhibit B, CC Docket No. 09-109 and CC Docket No. 95-116 (filed Mar. 11, 2015).

⁹ *Id.* at 2.

¹⁰ Neither Telcordia nor Ericsson are telecommunications services providers, and neither issues a majority of its debt to, nor derives a majority of its revenues from, a single telecommunications provider.

¹¹ These safeguards are attached as Exhibit 1.

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its interests in Telcordia into a voting trust, and if the Commission were to require FCC approval of the trustee, the Commission would actually have greater oversight over the selection of the trustee than it did with respect to the Neustar/Warburg voting trust.¹² In that case, Warburg unilaterally selected the trustee.¹³ We also discussed that the Commission did not subsequently ban any use of a voting trust with respect to an LNPA, but only stated that a voting trust would not be permitted in order to cure a situation in which a telecommunications services provider acquired a greater than five percent ownership of Neustar's publicly traded shares.¹⁴ That is very different than the situation presented here.

We further discussed that arguments that the selection of Telcordia will create a bias in favor of large wireless carriers to the detriment of smaller competitors are wrong.¹⁵ First, Telcordia's selection has been supported by a wide range of providers, as evidenced by those within NANC who voted to recommend Telcordia's selection. This includes entities that compete with the large wireless carriers, such as cable companies, VoIP providers, and CLECs. In addition, state public utility commissioners and state public utility consumer advocates supported the recommendation.¹⁶ Second, small entities frequently interact with the Number Portability Administration Center ("NPAC") database through larger intermediaries that interact with the database in the same way as large carriers. For example, interconnected VoIP providers who are not carriers, with one exception, all obtain numbers, and thus interact with the LNPA, through a numbering partner—usually a larger CLEC such as Sprint, Level 3, Bandwidth.com or XO. As another example, many small entities do not directly interact with the NPAC database but use a mechanized service bureau, which interfaces with the NPAC in a manner similar to the large carriers. Third, for those small entities that interact with the NPAC directly using a web-based graphical user interface ("GUI"), that GUI is very simple and requires little effort to transition. Nonetheless, all carriers will have the opportunity to test, and the small carriers will directly benefit from testing performed by the larger carriers and mechanized and manual services bureaus. It is thus extremely unlikely for Telcordia to be able to disadvantage small providers to favor large wireless carriers.

¹² We reiterated that we did not believe that a voting trust was necessary to address any present neutrality issue, and that the Commission could, alternatively, address any future issues at that time.

¹³ See Draft Voting Trust Agreement, attached as Exhibit B to Amended Request for Expedient Review of the Transfer of Lockheed Martin Communications Industry Services Business, CC Docket No. 92-237 and NSD File No. 98-151 (filed Aug. 16, 1999).

¹⁴ See *North American Numbering Plan Administration; Neustar, Inc.*, Order, FCC 04-203, 19 FCC Rcd. 16,982, 16,992 ¶ 25 (2004).

¹⁵ See e.g. Letter from James C. Falvey, Counsel to The LNP Alliance, to Marlene Dortch, Secretary, FCC, WC Docket No. 09-109 and CC Docket No. 95-116 (filed Mar. 12, 2015); Letter from Michael Calabrese, Director, Wireless Future Project, Open Technology Institute, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 07-149 & 09-109, CC Docket No. 95-116, and GN Docket No. 13-5 (filed Mar. 9, 2015).

¹⁶ A list is attached as Exhibit 2, and was provided to the Commissioners and their staffs.

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With respect to any current use of the NPAC data for ENUM, to the extent that Neustar has implemented this using NPAC fields and authorized specifications, Telcordia cannot change that absent changes from the Commission or NANC and its LNPA Working Group. Under the Request for Proposals ("RFP") and related procurement documents, Telcordia must operate according to all specifications, and all fields that are specified. Whether and how the NPAC will be used to support ENUM going forward is a matter of ongoing discussion within the industry and at the FCC and the RFP requires the LNPA to administer whatever decisions are made with respect to ENUM and the IP transition. This is the appropriate way to address the IP transition and ENUM, around which there is no current industry consensus. A two-year delay to await an industry consensus that may never arrive, as the LNPA Alliance suggests, would simply continue to allow Neustar to overcharge the industry and consumers.

In response to Neustar's ex partes filed March 12, 2015 seeking additional transition provisions,¹⁷ Telcordia notes that the Telcordia transition plan accounted for the use of a third party company to coordinate efforts between Telcordia and the LNPA ecosystem—which includes our customers, local system vendors, and the incumbent LNPA—to manage this transition successfully. As part of that effort, a governance plan will be established to enable an objective and transparent process to be followed. The Telcordia transition plans include a comprehensive set of testing for all our customers including the needed rollback procedures that will be followed as will be discussed and agreed upon with the industry. Based on these components already being covered in our plan, Neustar's recommendations in these areas are duplicative.

As Telcordia has repeatedly observed, a competitive bidding process cannot work if the incumbent cannot lose. Neustar was the beneficiary of at least four no-bid major modifications of its contract between 1999 and 2008, which have allowed the contract price to mushroom far beyond reasonable levels. That has now been tested through the submission of competitive bids, based on procurement documents that Neustar itself endorsed, and has demonstrated that Neustar

¹⁷ Letters from Aaron M. Panner, Counsel to Neustar, to Marlene Dortch, Secretary, FCC, at 1-2, CC Docket No. 09-109 and CC Docket No. 95-116 (filed Mar. 12, 2015).

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has been gouging the industry and consumers for years. It is time to complete the selection process and to move on to contract negotiation and transition, so that the industry and consumers can see their number portability administration costs drop dramatically.

Please contact me if you have any questions.

Sincerely,



John T. Nakahata
*Counsel for Telcordia Technologies, Inc.,
d/b/a iconectiv*

cc:

Commissioner Mignon Clyburn
Commissioner Ajit Pai
Commissioner Michael O'Rielly
Rebekah Goodheart
Nicholas Degani
Amy Bender
Daniel Alvarez
Travis Littman

Lisa Gelb
Randy Clarke
Ann Stevens
Sanford Williams
Michelle Sclater
Michele Ellison
Neil Dellar
Ken Moran
Allan Manuel

Exhibit 1

EXHIBIT A
Page 2

~~SUBJECT TO REQUEST FOR CONFIDENTIAL TREATMENT
NOT FOR PUBLIC INSPECTION~~

~~CONFIDENTIAL - NOT FOR DISCLOSURE
SUBJECT TO NON-DISCLOSURE AGREEMENT~~

PROPOSED COMPANY-SPECIFIC SAFEGUARDS

Telcordia Technologies, Inc./Ericsson

1. Effective January 1, 2013, all Telcordia operations and employees other than Telcordia's former Interconnection Business Unit have been transferred to other Ericsson legal entities. The remaining Telcordia Technologies, Inc. entity consists solely of the former Interconnection Business Unit, and provides number portability, anti-theft and anti-counterfeit device registries, information services, mobile messaging, and spectrum management services.
2. On February 14, 2013, Ericsson announced that Telcordia will be doing business as iconectiv and appointed officers to manage iconectiv and lead its operations.
3. Telcordia (d/b/a iconectiv) has its own financial and accounting systems, compensation plan, health and welfare benefits, and human resources organization.
4. In addition, Telcordia will have its own board of directors, a majority of whom will be outside, independent directors. In the interim period until the board is fully constituted, the outside, independent Directors will serve on an Advisory Board. Both the interim Advisory Board and the constituted Board of Directors will have independent authority to exercise their fiduciary governance responsibilities and obligations. Directors shall have a primary fiduciary duty of loyalty to the company.
5. The Board will be responsible for constituting a neutrality compliance committee and implementing other appropriate safeguards to ensure neutrality, including neutrality audits by third-party auditors, in Telcordia's operations, consistent with FCC requirements.
6. Telcordia Board members will not simultaneously serve as an officer or director of a Telecommunications Service Provider, nor will any board member have an ownership or voting interest of greater than ten percent in any Telecommunications Service Provider.
7. All employees, contractors, officers, and directors of Telcordia shall be bound by the Ericsson COBE with respect to any work involving LNPA services.
8. All employees, contractors, officers, and directors of Telcordia shall be bound by the LNPA Code of Conduct.
9. In the event that Telcordia receives notification from SunGard or any Sub-Contractor that the Sub-Contractor or any of its Affiliates intends to or has begun providing switched services that utilize number portability, Telcordia will notify the NAPM and the FCC within 7 business days.

Request for Proposal No. 2015-LNPA-VENDOR QUALIFICATION-1

EXHIBIT A
Page 3

~~SUBJECT TO REQUEST FOR CONFIDENTIAL TREATMENT
NOT FOR PUBLIC INSPECTION
CONFIDENTIAL - NOT FOR DISCLOSURE
SUBJECT TO NON-DISCLOSURE AGREEMENT~~

SunGard Availability Services LLP

1. SunGard will notify Telcordia if, at any time, it becomes aware that SNS or any other SunGard affiliate intends to or commences providing switched services that utilize number portability.
2. Any Sponsor of SunGard that also has, or serves as an officer or director of an entity that has, ownership interests, including voting rights, greater than ten percent in a Telecommunications Service Provider shall recuse him or herself from participating in material discussions or decisionmaking involving the services SunGard provides to Telcordia (the "SunGard Services").
3. All SunGard managers overseeing day-to-day responsibilities regarding the SunGard Services and all SunGard employees dedicated to providing services to Telcordia shall be bound by the LNPA Code of Conduct.

Request for Proposal No. 2015-LNPA-VENDOR QUALIFICATION-1

Exhibit 2

HIGHLY CONFIDENTIAL INFORMATION ^{REDACTED--FOR PUBLIC INSPECTION}
SUBJECT TO REVISED PROTECTIVE ORDER IN WC DOCKET NO. 09-109 &
CC DOCKET NO. 95-116 BEFORE THE FEDERAL COMMUNICATIONS
COMMISSION

